

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.23440 of 1995

Dt.06-03-2006

Between:

K.lakshmana Rao

..petitioner

and

1.The D.P.O., West Godavari, Eluru and others.

..Respondents

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W.P.No.23440 of 1995

Oral Order:

The petitioner who was elected as Sarpanch of Tadikalapudi Gram Panchayat was served with notice dated 12-01-1994 by the District Panchayat Officer—1st respondent informing that he misused the funds of the Gram Panchayat to a tune of Rs.51,640/- without any estimate or log books. On receipt of the same petitioner

submitted a detailed explanation on 31-01-1994 that the said amount was spent as per the devises of the 3rd respondent and he is instrumental in making disappear of the revenue records and responsible for recording the expenditure. Therefore, action should be initiated against him. Having not satisfied with the explanation the District Panchayat Officer—1st respondent through impugned proceedings dated 18-09-1995 held that the petitioner was responsible for the amount which was not covered by vouchers and accordingly called upon to deposit the same to the credit of Gram Panchayat failing to do so necessary action will be taken.

The only submission made by the learned counsel for the petitioner is that the said order was passed without giving any opportunity to the petitioner or conducting enquiry for which petitioner is not responsible. Since the 3rd respondent—full time employee was transferred without handovering the charge carried out by him the M.R.O. break open the locks and handed over the records to the petitioner. In spite of transfer 3rd respondent continued in the Gram Panchayat for a period of two years on the stay granted by the Administrative Tribunal. Therefore, he alone is responsible for misuse of the funds. Having ordered for recovery and called upon the petitioner to pay Rs.51,464/- on the basis of the alleged statement made by the 3rd respondent without providing the said statement or subject to enquiry by giving opportunity to cross-examine the 3rd respondent the impugned order is liable to be set aside.

Even after eleven years the respondents have not chosen to contest the matter by filing any counter or come forward and say that necessary opportunity was given to the petitioner before fixing the liability on him.

Learned counsel for the petitioner also tried to contend that under Section 265 of the A.P. Panchayat Raj Act (for short “the Act”) it is only the Commissioner who can pass order. Whether the Commissioner has delegated such power in favour of DPO or not is not forthcoming.

Under Section 44 of the Act the Commissioner shall supervise the administration of

all Gram Panchayats in the State and shall also exercise the powers and perform the functions vested in him by or under the Act. The Government may appoint such other officers as they may consider necessary for the purpose of inspecting or superintending the operations of all or any of the Gram Panchayats constituted under the Act.

Admittedly, before passing the impugned order no hearing was given to the petitioner except calling explanation. In view of the same, impugned order passed by the 1st respondent is set aside and matter is remitted to him to consider and pass appropriate orders within three months from the date of receipt of a copy of this order after giving due hearing to the petitioner to substantiate his claim including the jurisdiction and delegation of powers to the DPO.

The writ petition is accordingly allowed. No costs.

_____A.GOPAL REDDY, J.

06-03-2006

Murthy